

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H18-0922-25 **Applicant:** Enso Green Holdings R Ltd.

Proposal: Installation of access track and associated development - approved under H18-0085-25. Modification of Condition 2 to allow amendments to previously approved plans and Condition 5 relating to Traffic Management Plan

Location: Land Between East Bank/Gunthorpe Road And Gunthorpe Road Solar Farm Walpole Bank, Walpole Marsh

Terminal Date: 28th November 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development
04	Approach to Flood Risk
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking

National Guidance

National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development
 Section 4 - Decision-Making
 Section 9 - Promoting sustainable transport
 Section 12 - Achieving well-designed places
 Section 14 - Meeting the challenge of climate change, flooding and coastal change
 Section 15 - Conserving and enhancing the natural environment

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	1	0
WARD MEMBER	0	0	0	0
ENVIRONMENT AGENCY	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1

OTHER STATUTORY BODIES	0	0	1	0
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CASE OFFICER ASSESSMENT

Proposal

This is an application made under S73 of the Town & Country Planning Act 1990 (as amended). Permission for the installation of access track and associated development was approved under H18-0085-25. This application seeks the modification of Condition 2 to allow amendments to previously approved plans and Condition 5 relating to Traffic Management Plan.

The previous permission was approved subject to a list of proposed plans and documents (condition 2) one of which was *2102-022/CTMP/01 Rev B Construction Traffic Management Plan, TPA January 2025*. Within this plan the applicant narrowed the use of the access tract to only 2 x AIL vehicle movements. This document, again was controlled under condition 5, where the development was allowed subject to the terms described within the CTMP.

This application seeks to enable the use of the access at the East Bank/Gunthorpe Road junction for non-AIL deliveries associated with the development also. It therefore seeks to replace the previously approved CTMP with an updated version, that more accurately represents the intended use of the access track. During this application a new revision to the CTMP has been submitted.

The applicant has provided a covering letter, updated Construction Management Plan & Method Statement as well as access site location plan.

Site Description

This application site relates to an existing agricultural field that is located to the east of the banks of the Nene. It is wholly within the SHDC district.

The application is to serve the broader permitted solar site that straddles the administrative boundary between local authorities in two different counties, South Holland District Council (SHDC); and the Borough Council of Kings Lynn and West Norfolk (KLWN), in Norfolk.

That site benefits from an extant permission to formulate a solar farm; approved by the Planning Inspectorate in September 2023. A subsequent Section 73 application was approved which allowed the lifetime of the development to be extended to 40 years. All conditions originally attached, with the exception of the WSI, have not been addressed, as well as an application allowing for a battery energy storage system.

This application site, relating to the formulation of an access track is located wholly within the administrative boundary of South Holland. A public Right of way exists along the western side of the bank (of the River Nene) as well as TPOs. These are located outside of the proposed redline boundary. The application site is located within Flood Zone 3 in accordance with Environment Agency mapping. The South East Lincolnshire SFRA shows that the broader area is in a 'danger for most' area, however the bank, and land immediately to its west is in a less hazardous area, according to the SFRA, this presumably relates to the defence from the bank.

An extant permission exists to formulate this access, however its use is constrained to that of AIL vehicles only.

History

H18-0741-21 - Installation of a solar farm and battery storage facility with associated infrastructure.

Allowed at appeal 29th September 2023. An application was submitted to each Council (SHDC & KL &WN), on 21 January 2022 SHDC considered a report that raised no objections to the proposal.

The resolution was that decision making authority should be delegated to KLWN, as the greater proportion of the site lies in its administrative area, and we issued a notice of non-determination on 25 February 2022. This stated no further action would be taken on that application. SHDC therefore failed to determine the application. In the Statement of Case, SHDC suggest it does not wish to defend the appeal and has no objection to the proposal.
This application was allowed on appeal.

H18-1034-23 - Installation of a solar farm and battery storage facility with associated infrastructure - H18-0741-21 - approved on Appeal. Modification of Condition 3 to allow the solar farm and battery storage facility to operate for a further 5 years to 40 years. Approved 27-02-24.

H18-0040-24 - Condition 9 Written Scheme of Investigation. Approved 27-02-24.

H18-0085-25 - Installation of access track and associated development. Approved 16-04-25

Consultation Responses

Parish Clerk

A meeting on 28th October 2025 Sutton Bridge Parish Council resolved to make no comment on the application.

Environment Agency

We did not recommend the conditions referred to on application H18-0085-25 and therefore have no comment to make on this application.

Highways & SuDs Support

1st Response

The proposal is for minor amendments to Installation of access track and associated development - approved under H18-0085-25. Modification of Condition 2 to allow amendments to previously approved plans and Condition 5 relating to Traffic Management Plan. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk.

More recently, planning permission was granted for an access in April 2025 (SH DC Planning Reference: H18-0085-25). This was to support two abnormal load deliveries in relation to equipment for the substation. The access will be located at the western end of Gunthorpe Road at the junction with East Bank. ALL vehicles will route to this access via the A117 and East Bank alongside the River Nene. It is now proposed, through this CTMP&MS, that all construction vehicles will use this route.

All constructions vehicles and ALL vehicles will access the Site via an improved access on the junction of Gunthorpe Road and East Bank. The access arrangement drawing is shown in Drawing SK02 in Appendix C of the submitted Construction Traffic Management Plan and Method Statement. These works will be carried out under a S278 Minor Works Agreement.

Drawings SP01, SP02 and SP03, shown in Appendix B of the Construction Traffic Management Plan and Method Statement, provides the plan of the proposed traffic management arrangement as requested by LCC and demonstrates that 6 passing places can be achieved within the extent of the Public Highway. These works will be carried out under a S278 Minor Works Agreement.

A Section 59 Inspection under the Highways Act 1980 will be required before and after the deliveries to ensure that any damage caused to the public highway will be rectified at the applicant's expense. This shall be done with a representative of Lincolnshire County Council, and the applicant - photographic/video evidence will be taken.

2nd Response

Original comments still stand and no objection to the updated CTMP.

Fenland DC

No comments to make.

Kings Lynn & West Norfolk BC

The change of route for all vehicular access to the approved Solar Farm/BESS via East Bank and the approved Track is considered acceptable.

KL & WN also suggest that the Norfolk Fire and Rescue Team are consulted as well as Walpole Parish.

SHDC Officer Response

This access track already has permission for ALL vehicles. Should approval be granted to open up the access for all construction vehicles, the applicant will still need to amend the most recent approval relating the Solar Farm and BESS. It is under this subsequent amendment where it is pertinent to consult the recommended consultees suggested by the neighbouring authorities.

IDB

We note within the Construction Traffic Management Plan and Method Statement, Ref 2503-045/CTMP&MS/01 Rev. 02 (Transport Planning Associated, Aug 2025), that during the construction phase of the development, an infiltration-based drainage system will be implemented for the compound area (which will be surfaced with permeable material), along with a swale/shallow infiltration ditch to manage surface water from the minor impermeable areas, such as the compound facilities. We would like to take this opportunity to make the applicant aware that should they discharge surface water temporarily to an existing watercourse (for example, ground dewatering during construction), temporary Land Drainage Consent is required under the Board's Byelaw 3.

Planning Considerations

Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

Evaluation - Section 73

The proposal relates to the variation of Condition 2 and 5 of H18-0085-25, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of

the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with Condition 2 and condition 5 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'. The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted".

There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved". In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to conditions which go beyond 'minor' amendments.

It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Assessment

This application, made under Section 73 of the Town and Country Planning Act 1990 (as amended), seeks permission to vary Condition 2 (approved plans) and condition 5 (CTMP) of planning permission H18-0085-25. The proposed amendments comprise the following:

-Superseded the Construction Management Plan approved under condition 2 and referred to under condition 5 with an updated revisions (2503-045/CTMP&MS/01/September 2025) which considers the effect of all construction and operational traffic (as well as AILs).

Given that the track already has permission it is considered that there is no requirement to reassess matters of planning principle. The main issues for consideration are:

- Scope of Section 73
- Highways, Transport & Safety
- Reattachment of previously attached conditions.

Scope of Section S73

Section 73 of the 1990 Act allows an application to be made for planning permission to carry out development without complying with one or more of the conditions imposed on a previous permission. The Local Planning Authority may grant permission subject to different conditions, remove conditions altogether, or refuse the application if the original conditions remain justified.

The Planning Practice Guidance (Paragraph 14, ID: 17a-014-20140306) clarifies that Section 73 cannot be used to extend the time limit for commencement or change the description of development.

In this case, the proposal essentially seeks to update the CTMP to allow for the access to be

opened up to all vehicles, this results in changes to conditions 2 & 5, the terms of the permission "access track" remains unaltered. The changes are therefore within the lawful scope of a Section 73 application.

Highways, Transport & Safety

More recently, planning permission for an access was granted in April 2025 (SHDC Ref: H18-0085-25) to facilitate two abnormal indivisible load (AIL) deliveries associated with substation equipment. The approved access is located at the western end of Gunthorpe Road at its junction with East Bank, with AIL vehicles routed via the A117 and East Bank alongside the River Nene. Under the revised Construction Traffic Management Plan and Method Statement (CTMP&MS), it is now proposed that all construction vehicles rather than AIL vehicles alone will utilise this route.

Section 9 of the National Planning Policy Framework (December 2024) promotes sustainable transport. Paragraph 116 advises that development should only be refused on highway grounds where it would result in an unacceptable impact on highway safety, or where the residual cumulative impacts on the network would be severe, taking into account reasonable future scenarios. SELLP Policy 2 permits development where sustainable development considerations are satisfied, including safe and suitable access and vehicle generation. SELLP Policy 3 requires development proposals to demonstrate accessibility by a choice of transport modes, including public transport, rights of way and cycle networks, where relevant.

The proposal does not seek any physical alterations to the approved access. As confirmed in the applicant's covering letter, the application seeks only to amend Condition 2 (approved plans) and Condition 5 (CTMP compliance) to enable the use of the established access by all construction and operational vehicles associated with the wider solar and BESS development (which in turn will need to be regularised by amending the permission for the Solar Farm). No changes are proposed to the engineering, alignment or layout of the access itself.

The CTMP refers to a construction compound located to the north of the access track at the junction of East Bank and Gunthorpe Road. As this compound lies outside the red line boundary of the current application, it cannot be granted consent under Section 73 and will require a separate planning application. Determination of the present application must therefore exclude this element.

Both construction traffic and AIL loads would access the site via the improved junction at Gunthorpe Road and East Bank. The submitted access arrangement (Drawing SK02, Appendix C of the CTMP&MS) has been reviewed by the Highway Authority, who confirm that the necessary works will be secured through a Section 278 Minor Works Agreement. The proposed traffic management arrangements (Appendix B) demonstrate that six passing places can be delivered within the extent of the public highway. Highways further advise that a Section 59 inspection under the Highways Act 1980 will be required pre- and post-construction to ensure any highway damage is remedied at the applicant's expense.

An updated revision of the CTMP has been submitted during the course of the application, and upon re-consultation the Highway Authority has confirmed that its original position of no objection remains unchanged.

While the widening of the use of the access to all construction vehicles is acceptable, the inclusion of the compound area within the CTMP requires procedural clarification. As the compound cannot be authorised through this Section 73 application, the Highway Authority has recommended a condition requiring the submission and approval of a compliant CTMP, excluding the compound. This approach has been discussed with the applicant, who has confirmed their agreement to such a condition.

Subject to a revised CTMP being secured by condition, the proposal is considered acceptable in highway and transport terms. On this basis, the development is judged to comply with SELLP Policies 2, 3 and 36 and the transport requirements of the NPPF.

Previously attached Conditions

Conditions attached to the original permission related in the main to highway conditions. The CTMP was approved and a condition was attached that development was in accordance. This time for the

reasons outlined within this report, this will be a pre-commencement condition that has already been agreed. Other conditions relate to the implementation of passing places, highways improvement and monitoring the condition of roads, which again will be attached to any permission achieved. Lastly condition relating to BNG (gain Plan and HMMP), these once again will be attached.

Planning Balance

As detailed above, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions be taken in accordance with the Development Plan unless material considerations indicate otherwise. The relevant policies of the South East Lincolnshire Local Plan (SELLP) have been assessed, alongside the provisions of the National Planning Policy Framework (December 2024) and other material considerations.

This application seeks to vary Conditions 2 and 5 of planning permission H18-0085-25 to enable the previously approved access track that is currently restricted to two abnormal indivisible load (AIL) movements, to be used by all construction and operational vehicles associated with the wider consented solar and BESS development. The principle of the access track itself has already been established through the extant permission and is not open for re-examination under Section 73.

The key consideration is therefore whether the revised CTMP, and the resulting broader use of the access, would give rise to any unacceptable impacts, particularly in relation to highway safety, traffic management, or other relevant SELLP policy criteria. Lincolnshire County Council Highways has reviewed both the original and updated CTMP revisions and raised no objection, confirming that the proposed traffic management arrangements, access geometry and passing provisions are acceptable, subject to the implementation of works under S278 and monitoring under Section 59 of the Highways Act. No objections have been raised by statutory consultees, and the proposal has not generated any parish concerns.

It is acknowledged that the CTMP refers to a construction compound situated outside the application red line. As set out earlier in this report, that compound does not fall within the scope of this Section 73 application and does not form part of the determination. A condition requiring the submission and approval of a compliant CTMP (excluding any compound area) will therefore be re-imposed to ensure the development proceeds in a manner acceptable to the Highway Authority and the Local Planning Authority. This has been discussed with, and agreed by, the applicant.

Subject to the re-imposition of relevant conditions from the parent permission, together with the updated CTMP requirement, the proposal is considered to comply with SELLP Policies 2, 3 and 36, as well as the transport requirements of the NPPF. No material considerations have been identified which would weigh against the granting of permission.

Overall, the proposed variation of conditions would not give rise to harm that would justify withholding planning permission. The updated CTMP provides an appropriate framework for managing construction-related traffic, and the broadening of the access's use does not conflict with the Development Plan when considered as a whole. Accordingly, the balance of considerations weighs in favour of granting planning permission subject to conditions.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

Taking the above into account, the proposal would accord with Policies 2, 3, 4, 28, 30 and 36 of the South East Lincolnshire Local Plan (2019), and the corresponding provisions of the National Planning Policy Framework relating to flood risk, achieving well-designed places and protecting and enhancing the historic environment.